

The 2nd/3rd September, 1982

No. 9(1)-82-6Lab/7509.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Kohinoor Paints, Private Ltd., 23/5 K. M., Mathura Road Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER LABOUR COURT, HARYANA, FARIDABAD

Reference Nos. 207, 208 and 209 of 1981

between

SARVSHRI BHAGWAT PRASAD, MOHAN LAL AND RAMA NAND, WORKMEN, AND THE MANAGEMENT OF M/S KOHINOOR PAINTS, PRIVATE LIMITED, 23/5 K. M., MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bhandari for the workmen.

Shri S.L. Gupta for the respondent management.

AWARD

These references Nos. 207, 208 and 209 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID FD/92/81/33543, ID FD 93/81/33555, ID FD/91/81/33561, dated 13th July, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sarvshri Bhagwat Prasad, Mohan Lal and Rama Nand, workmen and the management of M/s Kohinoor Paints, Private Ltd., 23/5, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Sarvshri Bhagwat Prasad, Mohan Lal and Rama Nand was justified as in order? If not, to what relief are they entitled?

After receiving these references, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workmen according to the demand notice is that Shri Bhagwat Prasad joined the service on 1st July, 1978, Mohan Lal on 18th September, 1979 and Rama Nand on 10th October, 1978 as helper and their wages were Rs. 253.50 per month. They received the notice dated 5th February, 1981 for retrenchment of services from 6th March, 1981. The respondent refused to take the workmen on duty on 7th March, 1981. The workmen were the member of the union so they were victimised for the union activities and the termination in this way is illegal and without jurisdiction.

The case of the respondent according to the written statement is that the present cases are of retrenchment of these workmen and not of termination of services by the employer by way of dismissal or discharge. The demand notice of the claimant challenges the legality of retrenchment. The respondent management have also put up their case of a valid and legal retrenchment during the conciliation proceedings. The references are erroneous. The case of retrenchment fall under Third Schedule of Industrial Disputes Act, 1947 and the learned Labour Court is not competent to entertain such cases. The reference being bad should be dismissed on this ground alone. The retrenchment due to recession and acute shortage of power some of the helpers became surplus. Seniority list was displayed and the notices were served to the workmen on 5th February, 1981. After completion of the notice period they were offered their full and final dues including retrenchment compensation but like others the claimants refused to take the same which were sent to them by Money Order. 'P' Form duly filled in was also sent to the Government. The claimants were retrenched after complying with all the statutory conditions precedent to retrenchment of a workman as provided under section 25-F of Industrial Disputes Act, 1947 as such the claimants do not have the claim of reinstatement and for wages as claimed by them.

On the pleadings of the parties, following issues were framed:—

- (1) Whether the reference is bad in law, as objected by the respondent in written statement?
- (2) Whether the termination of services of the workmen are proper, justified and in order? If not, to what relief are they entitled?
- (3) Relief.

The references Nos. 207, 208 and 209 of 1981 were consolidated on the request of the parties as these were against the same respondent and on the same facts and law. It was also ordered that the evidence shall be recorded in Reference No. 207 of 1981 of Shri Bhagwat Prasad.

My findings on issues are as under :--

Issue No. 1 :

The representative of the respondent argued on this issue that the references are bad inasmuch as the present cases are of retrenchment and not of termination as the reference is termed. The cases of retrenchment fall in the Third Schedule a subject that can be referred to the Tribunal alone and not to the Labour Court. The references are bad the matter is not within the jurisdiction of the Learned Labour Court. This is clear even from the demand notice of claimants. The management's comments are from Exhibit M-39 to M-41 and the contention of the parties in Exhibit M-42 to 44 are very clear and the Government should have referred these references to the Tribunal and not to the Labour Court as the matter is clearly stated in Schedule III of the Industrial Disputes Act which is jurisdiction of the Industrial Tribunal alone and not of the Labour Court. He further argued that the respondent has produced all his record in respect of these workmen. The respondent concerned was started in the year 1978 as stated by Shri Achal Mishra, Manager of the respondent as MW-1. The respondent started work with 30 workers. The number of workers decreased due to shortage of raw material and market problems to produce the goods. There was a shortage of power. Out of thirty workmen, twenty were helpers and the helpers were surplus and the respondent retrenched the surplus helpers by giving them retrenchment compensation. The respondent prepared the seniority list which is Exhibit M-1 and retrenched three workmen from the list Exhibit M-1, which is admitted by the workmen Shri Rama Nand as WW-2. The workman has admitted that he joined after the person shown in the list at Serial No. 7 it clears that the workmen joined the services after the persons given in the list upto Serial No. 7 and they were retrenched as they were surplus. It is also admitted by the workman in his cross-examination that no other person joined as helper except one Sweeper-cum-Chowkidar. The list displayed at the notice-board is of 10 persons in which seven were senior of these workmen and were not retrenched. The workmen also admitted in their cross-examination that all workers shown in the list were members of the union. So there is no victimization of these workmen due to the union activities. He further argued that the workmen did not object the list of seniority in writing. The workmen admit that the notices of retrenchment were given to them in their demand notices and also in the statement. These workmen refused to take these notices when they were on duty which were sent by a registered post. The notices are Exhibit M-2 to M-4 and the postal receipts are Exhibit M-5 to M-7. Exhibit M-8 to M-10 are the acknowledgement receipts and Exhibit M-11 is the UPC receipt. The respondent prepared the full and final payment of 13th March, 1981 but they refused to take them by hand, and the same were sent through registered and UPC which are Exhibit M-12 to M-14. The letters received back are Exhibit M-15 and M-16. The Money Orders were sent to the workmen. The receipts of the Money Orders are Exhibit M-18 to M-21. All the money orders were received back in the company and the workmen refused to take them. The written copies are Exhibit M-21 to 23. The respondent further sent final retrenchment orders to the workmen with Rs. 50 extra money. The same were received back in the factory which are Exhibit M-28 to M-30. The money order receipts are Exhibit M-31 to M-33 and the money orders returned were Exhibit M-34 to M-36. The respondent submitted 'P' Form and the copy of which is M-17 through a registered post which is M-38. He argued that all these documents concerned to the retrenchment only which shows that they have retrenched these workmen and not terminated, for which this court has no jurisdiction to hear the cases as the reference is termed as retrenchment.

The representative of the workmen argued on this issue that in every case of retrenchment the management is required to comply with the mandatory provisions of section 25-F, G and H which the respondent has not complied with. The management should have given the one month's notice in writing stating reason for retrenchment, payment of compensation which is equivalent to 15 days average pay for every completed year of service, notice in the prescribed manner to the appropriate Government in form 'P'. The respondent has not complied with the mandatory provisions of the Industrial Disputes Act, so the notice of retrenchment is bad. It is correct that the workmen have admitted the receipt of retrenchment notice from the respondent but it is to be seen whether in the notice of retrenchment, the management has clearly come out with the reasons of retrenchment. The only reason stated by Shri Achal Mishra, MW-1 is the recession and acute shortage of raw materials and market problems to produce the goods. The management has not given any evidence to establish these facts. He further argued that they have to see whether the workmen were paid 15 days average pay for every completed year of service at the time of retrenchment. The workmen have denied to having received the money orders. So the respondent has terminated the services of the workmen taking the plea of retrenchment and the reference is not bad.

After hearing the arguments of both the parties and going through the file, I am of the view that the reference is bad in law because the demand notice of these workmen admitted by for the retrenchment and not for termination. They have admitted in their statement and the demand notice that they received the retrenchment notice and thereafter they were stopped for the work. The workman Shri Rama Nand, WW-2 has admitted in his cross-examination the seniority list which was displayed by the respondent at the notice-board and also admitted that they were junior to the other 7 persons shown in the list. The Government should have made the reference whether the retrenchment is valid and justified and not whether the termination is justified and proper as objected by the respondent in the preliminary objection that this court has no jurisdiction to decide the retrenchment cases as the case of both the parties for retrenchment which fall under Schedule III of the Industrial Disputes Act because I have no jurisdiction to hold the retrenchment good or bad and it is a case of retrenchment as admitted by both the parties. So the reference is bad and the issue is decided against the workmen and in favour of the respondent.

Issue No. 2 :

After deciding the above issue in favour of the respondent, there is no need to discuss the other issue on merits. So this issue is also decided in favour of the respondent and against the workmen and the workmen are not entitled for any relief except the retrenchment compensation which the respondent offered.

Dated the 1st July, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1506, dated 15th July, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 2nd September, 1982

No. 9(1)-82-6Lab./7589.— In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. The Sonepat Co-operative Sugar Mills Ltd., Sonepat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 206 of 1979

between

SHRI BALJIT SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE SONEPAT CO-OPERATIVE SUGAR MILLS LTD., SONEPAT

Present :

Shri Ram Sarup Lakra, for the workman.
Shri Vishnu Dutt Sharma, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/SPT/12779/49051, dated 21st November, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Baljit Singh, workman and the management of M/s The Sonepat Co-operative Sugar Mills, Ltd., Sonepat. The term of the reference was :—

Whether the termination of services of Shri Baljit Singh was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings and the only issue which arose out of their pleadings was 'As per the term of reference'.

The management examined Shri Sahib Singh Dahiya, as their only witness and closed their case. The workman examined Shri Raj Pal, son of Prem Raj, resident of village Jakholi, Shri Mahabir Parshad, Security Guard respondent and himself as his witnesses and closed his case. I heard the learned representatives of the parties and decide the issues as under :—

Issue :

The workman was charged for being negligent and inefficient in his duties on 17th February, 1979 when the Managing Director being informed by Mohinder Singh, Cane Clerk found at 1-45 A.M. that two trollies full of cane had come to Donga unauthorisedly and when the Managing Director had come to the site, he met Shri Sardar Singh of village Jajal and Narinder Singh of village Udeshipur and Raj Pal of village Jhakauli who also

confirmed the above facts. The trolleys were numbered as HRK-5673 and HRS-5167. It was further alleged that these tractors were being brought to the cane carrier with some ulterior motives and that the mischief would have caused financial loss to the mills if he had not reached and checked these tractors. The management pleaded that Shri Duli Chand was appointed Enquiry Officer when the reply of the workman was not found satisfactory. The Enquiry Officer submitted his report on 5th May, 1979 and after considering the enquiry report, final show cause notice was issued. The workman submitted his explanation to the final show cause notice. After that the services of the workman were terminated.—*vide* order, Exhibit W-1/4. The management has not examined the Enquiry Officer as their witness who could prove the enquiry proceedings or the findings given by him.

The workman has assailed the enquiry that the workman was not given the reasonable opportunity of defence and witnesses examined by the Enquiry Officer behind his back. He did not record the statement of the witnesses in the presence of the workman. The Enquiry Officer was only competent to explain any prove that the workman was given full opportunity of his defence and the witnesses of the management were examined in the presence of the workman and the workman was given the opportunity to cross examine them. No record of the enquiry proceedings has been placed on file, in the absence of any such evidence the enquiry can not be held to be fair and proper and in accordance with the principle of natural justice. The management has also not been able to prove before me that the workman was guilty of the charges levelled against him. On the other hand the workman has been able to establish his innocence and to disprove the management version by corroborative evidence through the oral testimony of his witnesses WW-1 Shri Raj Pal and WW-2 Shri Mahabir Parshad. He has also filed the affidavit of Shri Raj Pal Singh, WW-1, which has been marked as W-1, affidavit of Shri Mahabir Parshad marked as W-2. The name of Sardar Singh, Narinder Singh and Raj Pal Singh are mentioned in the charge-sheet issued to the workman who have stated on oath that no trolley was weighed without its turn on 17th February, 1979 at 1-20 A.M. or so. Shri Raj Pal Singh has further stated that he did not go to the mills on 17th February, 1979 morning and he did not see any trolley being weighed out of turn. All the persons mentioned in the charge-sheet have refuted the allegation of the management and support the case of the workman that no such irregularity as alleged by the management was committed on 17th February, 1979 at 1-45 A.M. The management has totally and miserably failed to justify their action of terminating the service of the workman. I, therefore, hold that the termination of the workman is neither justified nor in order and the workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.

Dated 17th July, 1982

Endorsement No. 1754, dated 19th July, 1982.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.

No. 9(1)82-6Lab 7903.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s G. M. Worested Spinning Mills (P) Ltd., Link Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 428:1978

between

SHRI RAJ KUMAR WORKMAN AND THE MANAGEMENT OF M/S G. M. WORESTED
SPINNING MILLS (P) LTD., LINK ROAD, FARIDABAD

Present.—

Shri S. S. Gupta, for the workman.

Shri S. L. Gupta, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Raj Kumar and the management of M/s G. M. Worested Spinning Mills (P) Ltd., Link Road, Faridabad, by order

No. ID/FD-1/156-78/42070, dated 18th September, 1978, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Raj Kumar was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor on 9th November, 1979 :—

- (1) Whether the workman abandoned his job of his own ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) Relief

The management examined Shri Vipan Mehra, Manager as MW-1 and the workman examined himself as his own witness. Arguments were heard.

Issue Nos. 1 and 2.—MW-1 deposed that the workman joined service on 8th September, 1977. The workman started remaining absent from 28th June, 1978. Letters Ex. M-1 and M-2 were sent under U.P.C. receipts Ex. M-3 and M-4. The workman did not report for duty, therefore, his name was struck off on 15th July, 1978. He denied the suggestion that the workman was arrested by the police and reported for duty on 30th June, 1978. He also denied the suggestion that Ex. M-1 to M-4 were prepared later on for the purpose of this case. He also denied the suggestion that the workman was in the employment with effect from 1st July, 1977. He also could not tell the total number of days of his work. He admitted that no retrenchment compensation was paid to him. WW-1 deposed that he had served for about one and half years. He did not remember the dates. The police had arrested him. When he was released on bail he was not taken on duty. He served demand notice Ex. W-1. He did not receive letters Ex. M-1 and M-2. In cross examination he replied that his address was Quarter No. 10 Ram Phal Tea Stall Link Road Faridabad. He did not send application for leave when he was arrested. He had served demand notice on the date when the management refused to take him on duty.

The learned representative of the management argued that the workman absented himself from the service. There was no evidence that the workman was arrested by the police. On the other hand learned representative for the workman argued that the letters Ex. M-1 and M-2 were forged later on. The workman was arrested by the police. He argued that it was a case of retrenchment and no compensation was paid to him. He cited case of D.C.M. *versus* Shambhu Nath Mukerjee and Shrimati Santosh Gupta *versus* State Bank of Patiala.

I have gone through the file and find that in the demand notice Ex. W-1 the workman had given his date of appointment as 8th September 1977 and that of termination 28th June, 1978. The demand notice was dated 7th July 1978. The workman had admitted that he had sent no leave application when he was arrested by the police. In fact no evidence was led to prove the factum of arrest which prevented the workman from attending his duty. The workman has admitted his address given on Ex. M-1 and M-2 to be correct but he has denied having received the letters which may be possible. As regards the law cited by the learned representative for the workman I am afraid that the rulings were not applicable in the present case. The workman was entitled to retrenchment compensation under section 25-F of the I. D. Act in case the conditions precedent was :—

“No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer till—

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months ; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette”.

In his statement, the workman has given period of service one and half years but in his demand notice, it amounts to only about nine months and fifteen days. He has not completed one year of service.

therefore, the section was not applicable to the case. There was no dispute about absence from service but the workman attributed his arrest to his absence. As a result of above discussion, I find that the workman has abandoned his job by remaining absent and he was not entitled to any relief.

Dated the 10th July, 1982

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 810, dated the 27th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6-Lab/7910.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Emgee Board and Paper Mills Plot No. 107-108, Sector-25, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. *333/1981

between

SHRI GOPALA KRISHANA PILLAI AND THE MANAGEMENT OF M/S EMGEE BOARD
AND PAPER MILLS PLOT NO. 107-108, SECTOR-25, FARIDABAD

Present.—

Shri Chaman Lal Oberoi, for the workman.

Shri K. P. Aggarwal, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Gopala Krishna Pillai and the management of M/s Emgee Board and Paper Mills, Plot No. 107-108, Sector-25, Faridabad, by order No. ID/FD/103/81/52176, dated 21st October, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Gopala Krishna Pillai was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my order, dated 5th January, 1982 :—

- (1) Whether the workman absented himself with effect from 7th June, 1981 ? If so to what effect ?
- (2) Whether the termination of service of Shri Gopala Krishna Pillai was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri M. Domodar, Time Keeper as MW-1. The workman examined Shri Sudama Parshad workman as WW-1 Shri Daya Nand workman as WW-2 and he examined himself as his own witness as WW-3. Arguments were heard.

Issue No. 1.—MW-1 deposed that he knew the concerned man whose appointment was Ex. M-1. It was signed by the workman. According to the attendance register, the concerned workman was absent from 7th June, 1981 to 19th July, 1981 without any information to the management. Copy of the abstract was Ex. M-2. Letters copy Ex. M-3, was sent to the workman. Postal receipt was Ex. M-4. In cross examination he replied that no letter prior to Ex. M-3 was sent. The management did not have

local address of the workman, therefore, letter was sent to his permanent address. Letter was not sent by registered post. He showed his ignorance about making report to the police regarding involvement of the workman in theft. He admitted that the workman had claimed wages for the month of May before Payment of Wages Authority. He admitted that workers were supplied attendance cards and Ex. W-1 and W-2 were his attendance cards. He denied the suggestion that the workman was present but was not marked so. WW-1 deposed that he worked in factory in 1978. He knew the concerned workman who was arrested by the police in the month of June, 1981 at the allegation of theft. When the workman again came for his duty he was not allowed. In cross examination, he admitted that some machine parts were stolen from store. He did not know if the report was lodged in the police. He did not know when the workman was arrested. The workman had come for duty two or three times but he did not remember the dates. He did not know if his name was struck off for his absence. He replied that he had not worked with him from 7th June, 1981 to 19th June, 1981. WW-2 corroborated the statement of WW-1. In cross examination, he admitted that he was not in the service of the management now a days. He did not know the reason of arrest of the workman. WW-3 deposed that he joined the factory of the management in 1978 as a popular operator. A theft had occurred in the store of the management which was detected on 19th May, 1981. On 22nd May, 1981 at about 5-30 p.m. he was called by the management and asked to find stolen goods of the shops of scrap dealers. As per instructions he went to Ballabgarh but the goods was not available on the shops. Then he went to Chawla Colony Ballabgarh and he found two bushes on one shop. He informed the Manager who sent Shri Dharambir to the City Police Station with him. When they went to the Scrap dealer's Shop, old man who had been seen previously sitting there was not available. His son told that he will return shortly. Police man asked the boy to show the stolen property to him but boy insisted that his father will show the goods. Both of them searched the shop and found out a pair of bushes and pair of pulleys in the shop. In the mean time, shop keeper also appeared and informed that about 25 days back some one had sold the goods to him. Then they came to the Manager's house with the goods who kept the same with him to show to the proprietor. After-wards the goods were taken to the police station. The police asked him to wait at scrap dealer's shop the next morning at 8-00 a.m. He waited for police upto 11-00, when no body came he returned to the factory and reported to the Manager. The matter was reported to the Director who sent the Administrative Manager with him, to the police station to lodge a report but it was not registered upto evening. They went to the scrap dealer who also came to the police station with them. He came alongwith a policeman to take the Manager. Scrap Dealer was released by the police on receipt of some telephone. Next day the police took the contractor to the police station and on 25th he was also called there. Manager and Security Officer were also there and they implicated him in the theft. but the proprietor told him to attend his duty. The police arrested him on 6th June, 1981. He was released on bail on 11th June. When he reported for duty on 12th June he was not allowed duty. No other date was fixed by the Court in the theft case. In cross examination, he replied that he was matriculate. In the police the report was lodged on 24th May, 1981. Copy of report was Ex. M-6. He admitted that he was on duty up to 6th June, 1981. He denied that the F.I.R. was lodged on 6th June. He also denied that he absented himself from 6th June, 1981 to 1st June, 1981 for a fear of arrest. He did not know if his name was struck off on 19th July, 1981. His address was not correct on Ex. M-3 and M-4. Conciliation report was Ex. M-7. Scrap dealer was not arrested for keeping the stolen goods.

I have gone through the attendance record and find that the workman was marked absent from 7th June onwards. The workman has admitted that he did not work from 7th June, 1981 to 19th July, 1981 in the factory. It is correct that report was lodged on 6th June, 1981 at 9-45 p.m. under section 380 I.P.C. In the given facts, it is correct that the workman was absent from his duty from 7th June, 1981 to 19th July, 1981.

Issue No. 2. - I have already discussed evidence in the above issue. the learned representative for the management contended that the workman absented himself from duty because he was involved in a police case. On the other hand learned representative for the workman argued that the workman was not charge-sheeted for theft nor he was prosecuted by the police even F.I.R. was lodged after 18 days of the alleged theft. The workman was falsely implicated although his name was not mentioned. He had also helped the management in the recovery of stolen goods. The workman was not allowed to join his duty when he was reported on 12th June, 1981. He cited 1978 I-LLJ-page-1 and 1981-I-I.I J-page 807. I have given thoughtful consideration to the matter and find that the case is of striking of name on account of absence. It is admitted by the parties that the workman had served more than one year. He was not charge-sheeted for mis-conduct nor the result of prosecution was placed on file by the management. In 1978-I-I.LJ-page-1, it was held that striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(00) of the Act. There is nothing to show that the provisions of Section 25.F(a) and (b) were complied with by the management in this case. The provisions of Section 25-F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent is invalid. This ruling was further retiated in the case of Smt. Santosh Gupta *verses* State Bank of Patiala 1980-II-LLJ-page 72 and further in 1982 Lab. I. C. page 811 in which it was held 'If termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action (ii) voluntary retirement of the workman (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf (iv) or termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(00). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment.

It is admitted fact that no compensation was paid under Section 25-F while striking off name of the workman. Mere suggestion that it was offered on 19th July, 1981 to the workman was of not avail as he was absent upto 18th July, 1981 and his name was struck off on 19th July 1981. Therefore, the striking off name amounts to retrenchment and because the provision of Section 25-F of I.D. Act were not followed, therefore, the action is bad in law. The natural consequence of it will be that the workman remained in service. Therefore he will be entitled to reinstatement with full back wages. I pass award accordingly.

Dated the 6th July, 1982

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 817, dated the 27th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6-Lab-7911.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad/Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Hindustan Kokaku Wire Ltd, Mathura Road, Faridabad.

BEFORE SHRI R.C. BHANDARI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Complaint No. 2/1979

between

SHRI B.K. SHARMA WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN KOKAKU
WIRE LTD., MATHURA ROAD, FARIDABAD

Present :

Shri Balbir Singh, for the workman.

Shri K.P. Aggarwal for the management.

AWARD

This is an complaint under section 33(a) of the Industrial Disputes Act, 1947 filed by the workman against the management. Notice of the complaint was sent to the management who appeared and filed its reply. The following issues were framed by learned predecessor on 22nd June, 1979 :-

- (1) whether the workman was not a workman concerned in reference No. 542 of 1978 ?
- (2) whether the domestic enquiry held against the workman is proper and fair.
- (3) whether the management has contravened the section 33 of the I. D. Act ?
- (4) Relief ?

The management examined Shri K.P. Aggarwal, Enquiry Officer as MW-1 and Shri Ramesh Chander Singh as MW-2. The complainant examined himself as his own witness.

Issue No. 1.—On this issue no evidences were led by the parties. However copy of notification reference No. 134 and 542 of 1978 were placed on file by the complainant. In reference No. 134 of 1978 dispute was about bonus for the year 1976-77 and in reference No. 542 of 1977 bonus for the year 1977-78, revision of grades and scale of pay etc. It is nowhere evident that the complainant was not entitled to the benefits covered by above said reference. Therefore this issue is decided against the management.

Issue No. 2.--MW-1 deposed that he was appointed enquiry officer to enquire into charge-sheet Ex. M-2 levelled against the complainant Ex. M-1. Enquiry was conducted by him. Photo copy was Ex. M-3. Enquiry was conducted according to the principles of natural justice. Documents produced by the management were Ex. M-1 to M-32. Finding of the enquiry was Ex. M-4. In cross-examination, he replied that no record of past service was produced during the enquiry. Ex. W-1 was copy of Ex. M-12 which was produced during the enquiry. Another document Ex. W-2 was a copy of Ex. M-10 which was received during the enquiry. Likewise Ex. W-3 was a copy of Ex. M-18 and Ex. W-4 was a copy of Ex. M-28 in the enquiry. Documents Ex. W-5 to W-8 were never produced before him by the management during the enquiry. He denied the suggestion that the workman had not participated in the enquiry after first date of appearing and he had demanded some facilities which were refused to him. In fact all the facilities were provided to him. He denied the suggestion that the enquiry proceeding were concluded in a hurry. He also denied the suggestion that the workman was not supplied list of witnesses and list of reliances before the enquiry. In fact, the workman had demanded only list of witnesses and copy of standing orders. The workman appeared in the enquiry on 16th September, 1978 only. He did not know if the management was in correspondence with the complainant during the enquiry. MW-2 deposed that he had served letter Ex. M-5 on the complainant personally who refused to accept the same. In cross-examination he replied that he did not know if the management sent many letters by post. WW-1 the complainant stated that he was working with the management from February, 1974. He had fallen sick on 3rd July, 1978 and was on E.S.I. leave. He received charge-sheet Ex. W-10 during his sickness on 18-7-1978. Shri Kapoor, Personnel Officer of the management came to his house and told him that there was trunk call from Rampur. He went to the factory but there was no trunk call. He was directed by the Security Officer to sit in the Manager's Room where Shri V.C. Nahata, President, Shri S.D. Bhanuka, K.C. Gupta, Assistant Commercial Manager were already present. Shri D.D. Ahumkar was also present there. asked him to clear his account because he usually remained ill. When he refused to clear his account they threatened him and issued him charge-sheet. It was replied by him, *vide* Ex. W-9. He was then issued supplementary charge-sheet Ex. M-2 which was replied, *vide* Ex. W-11. He was called for enquiry two months later. He attended the enquiry and demanded some papers from enquiry officer. The enquiry was adjourned. He went to attend the enquiry on adjourned date. He found factory on lock out. Upto the lifting of lock-out, when he went to the factory to enquire about the enquiry he was told that the intimation will be received by him in this behalf. No intimation was received by him but he learned through a notice in the News paper. He was called to participate in the enquiry. He had no money with him. He requested the management to pay him subsistence allowance so that he could participate in the enquiry. He was not paid anything. No enquiry was held. In cross-examination he stated that he was cashier. He was graduate, knew Hindi and English. He did not make complaint to the Labour Officer or any other authority about the threat at the time of chargesheet. On the first day of enquiry, he asked for the copy of the standing orders, list of managements witnesses, documents of reliance. He was given these facilities when he went on the next date. He denied the suggestion that despite repeated opportunities he did not participate in the enquiry. He admitted his address on Ex. M-3 as correct. He had read notice in Nav Bharat Times. After which he went to the factory for enquiry and handed over a letter at the factory gate. Copy of letter was Ex. W-6. After lock out, he was told by a typist Mr. Krupp that intimation will be sent to him about date of enquiry. He received many letters and telegrams about the enquiry.

Learned representative for the management argued that the workman was given opportunity to participate in the enquiry. It was conducted on the basis of principles of natural justice. Notice was issued to him after the lock-out. On the other hand, learned representative for the workman argued that the enquiry was conducted *ex parte*. No procedure prescribed in the Standing Orders was followed. The workman was not allowed to adduce his evidence. He also contended that the charge-sheet was not signed by the competent authority. Copy of the complaint was not supplied to the workman. There was lock-out in the factory and enquiry was adjourned. No fresh notice was issued to him. Suspension allowance was not paid to the workman and standing orders were not followed.

I have gone through the enquiry file and find that the workman was charge-sheeted, *vide* Ex. M-2 for misconduct of acts of subversive of discipline by submitting sickness slips from E.S.I. while working in M/s Dabriwala Steel Engineering Company Limited. The workman participated in the enquiry at the initial stage and demanded copy of certified standing orders, list of witnesses and list of reliance of documents. Later on the workman did not attend enquiry although the letters were despatched to him. Finally a notice was published in the Nav Bharat Times. The workman has admitted the information of this notice in his statement but he requested the management for payment of his subsistence allowance, *vide* his letter Ex. W-6. In his letter notice referred above is also mentioned. In his next letter Ex. W-5 the workman stated that enquiry was held against him violating principle of natural justice. In these circumstances, I find that the enquiry officer proceeded with enquiry *ex parte*. The management examined Shri K. C. Gupta Assistant Manager Accounts, Shri Rajinder Singh, Supervisor, Shri N. Kapoor Personnel Officer of Forging Pvt. Ltd., Shri S.S. Aggarwal Commercial Manager of M/s Dabriwala Steel & Engineering Co. Ltd., and R.S. Puri, Security Officer. To bring home the charge against the workman, E.S.I. slips dated 6-5-1978, 15-5-1978, 25-5-1978, 3-7-1978, 10-7-1978 and 19-7-1978 were produced in the enquiry. Photo copies of the attendance record and outward register were also produced. O.P.D. record from E.S.I. Dispensary were also produced. Shri S.S. Aggarwal proved certificate Ex. M-4 of the enquiry issued in respect of service of Shri R.K. Sharma from 9th May, 1978 to 21st May, 1978 in his company. From the evidence it was proved that the complainant engaged himself for work in the Dabriwala Steel Co. during the period he claimed sick leave from his employer. There for e I find that the enquiry was fair and proper and the report was based upon the evidence.

Issue No. 3.—The learned representative for the management cited 1977 Supreme Court cases page 20 in which the scope of jurisdiction by the Tribunal under Section 33 was discussed. It was held 'The foundation of jurisdiction of the tribunal to entertain a complaint under Section 33-A is the contravention of Section 33 of the Act.'

Where the action is punitive, namely, dismissal or discharge for misconduct, the tribunal has to reverse the action to guarantee that no unfair labour practice or victimisation has been practised thereby. If the procedure of fair hearing has been observed the Tribunal has to find in an application under Section 33 that a *prima facie* case is made out for dismissal. If, on the other hand, there is violation of the principles of natural justice in the enquiry, the tribunal can go into the whole question relating to the misconduct and come to his own conclusion whether the same is established.

It may, therefore, be held that Section (2)(b) makes it obligatory upon the employer to make an application to the tribunal under the proviso only when he discharges or dismisses a workman for misconduct.

I fully agree with the above proposition of law and find that the action of dismissal was taken for misconduct. Although that misconduct was not enumerated in the standing orders of the company, but in the above said ruling it was further held that misconduct contemplated in Section 33(2)(b) of the I.D. Act, 1947, need not be the one enumerated in the standing order of the company. Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. In the case in hand the workman during his employment with the respondent sought leave on falsely pretext and served during the period with another company at the rate of monthly wages of Rs. 800. This was a serious mis-conduct but I find that the workman was dismissed during pendency of reference No. 134/1978 and 542/1978 and admittedly no application under section 33(2)(b) of the I.D. Act was filed for approval of the action of dismissal by the management. Therefore I find that the management contravened the proviso of Section 33(2)(b) in not obtaining the necessary approval. The complaint under section 33-A was to be treated as at reference for adjudication in accordance with the provisions of I. D. Act. Therefore it was necessary to go into the merits of the case of the complainant. As I have discussed earlier that the workman was charge-sheeted, for misconduct to get employment elsewhere during his employment with the respondent and taking leave on falsely pretext to engage himself in work with his second employer. I find from record that explanation was called which was denied by the workman. Charge-sheet was also denied. Thereupon the management constituted the domestic enquiry. The workman appeared but then absented. The management sent many letters to the workman for association in the enquiry and finally a notice was published in the Daily 'Nav Bharat Times' which the workman admitted in his letter, —*viz.* Ex. W-10 and also in his statement on oath. He was found guilty of the charge by the enquiry officer and acting upon the finding, a final show cause notice was issued to the workman, after which the dismissal order Ex. M-6 was passed. Therefore, I find that the action of the management was justified. Therefore, the workman was not entitled to any relief. I pass award accordingly.

Dated : 8-7-1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 818, dated 27th July 1982

Forwarded four copies to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)82-6-Lab/7912.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Mahavir Metal Works (P.) Ltd., Mathura Road, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 531/78

between

THE WORKMEN AND THE MANAGEMENT OF M/S MAHAVIR METAL WORKS (P) LTD.,
MATHURA ROAD, FARIDABAD

Present:-

Shri R. N. Roy, for the management.
Shri S. L. Gupta for the workmen

AWARD

The State Government of Haryana referred the following dispute between the management of M/s Mahavir Metal Works (P) Ltd., Faridabad and its workmen, by order No. HD FD 161-78/52125, dated 22-11-1978, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 : -

- (1) whether the grades and scales of pay of the workmen i.e. unskilled, semi-skilled and skilled should be fixed ? If so, with what details and from which date ?
- (2) whether all the workmen should be fitted in grades according to the job performed by them ? If so, with what details ?
- (3) Whether the workmen are entitled to the grant of dearness allowance ? If so, with what details ?
- (4) whether the workmen are entitled to the grant of bonus at a higher rate than declared by the management for the years 1974-75, 1975-76 and 1976-77 ? If so, with what details ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my learned predecessor on 5-7-1979 :

- (1) whether proper espousal by a substantial number of workmen is not needed for raising these demands ?
- (2) if issue No. 1 is found against the workman, whether the demands are properly espoused ?
- (3) whether the grades and scales of pay of the workmen i.e. unskilled, semi-skilled and skilled should be fixed ? If so, with what details and from which date ?
- (4) whether all the workmen should be fitted in grades according to job performed by them ? If so, with what details ?
- (5) whether the workmen are entitled to the grant of dearness allowance ? If so, with what details ?
- (6) whether the workmen are entitled to the grant of bonus at higher rate than declared by the management for the year 1974-75, 1975-76 and 1976-77 ? If so, with what details ?

And the case was fixed for the evidence of the workmen. Another issue was framed by my learned predecessor on 1-1-1980. Evidence was recorded on issue No. 1. It was treated preliminary issue which was decided by order, dated 5-10-1981 against the management. On the other issues, Shri R.N. Roy, President Mercantile Employees Association appeared as witness and deposed and placed on record a letter from M/s A.P.E. Belliss India Ltd., giving details of pay scale and D.A. applicable in the said establishment. That was also a engineering company. In cross-examination, he denied the suggestion that M/s Mahavir Metal Works was not a engineering industry. He did not work in A.P.E. Belliss India Ltd.. He denied the suggestion that letter did not bear signature of the management. Financial status of that company was better. Belliss India Ltd. manufactured steam turbines. It had two factories, one at Faridabad and other in West Bengal. On behalf of the management, S.K. Khanna appeared who deposed that in our factory, there were 150 workers. There was no dispute with the workman because the same had been settled by a settlement. The settlement was Ex. M-1. Grades and pay scales had been fixed by this settlement. Another settlement was also in force. The management paid D.A. per rise in index number. The management used to give annual increment. He further deposed that there was strike in the year 1980 in the factory which resulted in loss in the factory, in 1981 A.P.E. Belliss India Company was far larger than his company. That company manufactured turbine, whereas his company produced aluminium utensils. In cross-examination he stated that it was a limited company and he was not a member of Board of Director. He was in the employment for about 9-10 years. There were about 100 workers in the factory in 1974. He did not know if in the balance sheet of 1974-75, there was a profit of 12 lakhs. He did not know the profit of other years. MW-2 deposed that he was a legal adviser of the respondent company and A.P.E. Belliss India Ltd. A.P.E. Belliss India Ltd. was multinational organisation. The financial position of the respondent was not good. In cross-examination, he admitted that A.P.E. Belliss India Ltd. had two factories in India. He further deposed that according to the balance sheet of the company bonus not more than minimum was payable.

Learned representative for the workmen argued that the workmen were entitled to the grades and scales of pay, D.A. and bonus at higher rate. On the other hand, learned representative for the management argued that the workmen had settled their dispute with the management. Therefore, no workmen appeared in the case to claim benefits of the demand notice. He also argued that Shri R.N. representative for the workmen was the only witness to appear in evidence as witness on the preliminary issue as well as on merits. He further argued that the parties had settled their dispute, vide Exhibit M-1 before the Conciliation Officer and the settlement was binding being recorded under section 12(3) of the Industrial Disputes Act, 1947. He pointed out to the settlement to assert that all the demands of the workmen were discussed and settled amicably. It was further contended that letter of A.P.E. Belliss India Ltd. had no bearing on the present case because that was a multinational company manufactured steam turbines.

I have gone through the file and find that Shri R.N. Roy was only witness to appear in the case. Admittedly he was not an employee of the management. As regards, the settlement Ex. M-1 it was dated 19-10-1979 i.e. arrived at during the pendency of present dispute. According to the settlement, grades and scale, annual increment, bonus for the year 1978-79 was agreed between the parties. According to clause 9 of the settlement dispute under present reference was also discussed and it was agreed to file a copy in this case. Arguments of the learned representative that the settlement had no bearing on the case is not tenable because the scheme of the Industrial Disputes Act shows that it aims at settlement of all industrial disputes arising between the Capital and labour by peaceful methods and through the machinery of conciliation, arbitration and if necessary by approaching the Tribunals. Therefore, the settlement was always to be preferred because it kept peace and harmony in the industry and good relations between the employer and employee and while departing. I may say that two companies could not be equated for payment of pay scale etc. to its employee only because these were engineering concerns. In the present case while A.P.E. Belliss India Ltd. Company was manufacturing steam turbine, the present management was engaged in manufacturing of aluminium utensils. There was no evidence that the companies were equal or very similar in respect of capital, manufacturing, employment and turn-out etc. I gather that the workmen had settled their dispute and even otherwise they had failed to substantiate the above demands. Therefore they are not entitled to any other relief.

M. C. BHARDWAJ,

Dated : 8-7-1982.

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endorsement No. 819, dated 27th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9(1)82-6Lab/7914.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S Balmount Rubber Industries 58-B, Industrial Area, Faridabad

BEFORE SHRI M.C.BHARDWAJ, PRESIDING OFFICER INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 361/1981

Between

SHRI SARVAN KUMAR WORKMAN AND THE MANAGEMENT OF M/S BALMOUNT RUBBER
INDUSTRIES, 58-B, INDUSTRIAL AREA, FARIDABAD

Present.—

Shri R.C. Sharma, for the management.

Nemo, for the workman.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Sarvan Kumar and the management of M/s Balmount Rubber Industries, 58-B, Industrial Area, Faridabad, by order No. ID/FD/159/81/53931, dated 3rd November, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Sarvan Kumar was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared. The workman did not file claim statement and treated demand notice as claim statement. The management filed written statement and the case was fixed for the rejoinder. Opportunity was taken for filing of rejoinder but on the date fixed none appeared for the workman, therefore, he was proceeded *ex parte* and following issues were framed:—

- (1) Whether the termination of service of the workman is justified?
- (2) Relief.

And the case was fixed for the evidence of the management who examined Shri Satish Ahuja, Enquiry Officer as MW-1 and Shri S.S. Gulati, Managing Partner as MW-2.

MW-1 deposed that he was appointed enquiry officer, *vide* Ex. M-1. Information was sent to the workman, *vide* Ex. M-2. Charge-sheet to be enquired was Ex. M-3. The workman objected to his appointment, *vide* Ex. M-4. The management replied that letter, *vide* Ex. M-5. Enquiry was conducted by him. He recorded statements of witnesses. Proceeding was Ex. M-6. Documents produced during the enquiry by the management were Ex. M-7 to M-12. Finding of enquiry was Ex. M-13. The workman filed documents Ex. M-14 and M-15 during the enquiry. MW-2 deposed that after receipt of enquiry report show cause notice Ex. M-16 was issued which was replied by the workman, *vide* Ex. M-17. The workman was dismissed *vide* letter Ex. M-18.

The learned representative for the management argued that the workman was charge-sheeted for mis-conduct, giving less production and indiscipline. His service was terminated after holding the domestic enquiry. I find from the record of enquiry that the workman had protested with the management over the appointment of Shri Satish Ahuja. His request was turned down by the management. The workman did not participate in the enquiry which was conducted *ex parte*. Three witnesses were examined by the enquiry officer, Shri S.S. Gulati, Managing Partner, Shri Mohinder Luthra and Shri Sushil Kumar. I find that they all proved allegations in their own testimony and placed documents in support of the charge-sheet. The workman has not appeared to deny the allegations of the management and substantiate his claim. Therefore, I find that the termination was justified. I pass my award that the workman was not entitled to any relief.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 821, dated the 27th July, 1982

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 3rd September, 1982

No. 9(1)82-6Lab/7942.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/S Karnal Co-operative Sugar Mills, Ltd. Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT HARYANA, ROHTAK

Reference No. 44 of 80

Between

SHRI KARTAR SINGH KAPOOR, WORKMAN AND THE MANAGEMENT OF M/S KARNAL COOPERATIVE SUGAR MILLS, LTD., KARNAL

Present.—Shri O.P. Daryal, for the workman.

Shri Surinder Kaushal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor, *vide* his order No. ID/KNL/28-80/10761, dated 28th February, 1980 under section 10 (i) (c) of the I.D. Act for adjudication of the dispute existing between Shri Kartar Singh Kapoor, workman and the management of M/s The Karnal Co-operative Sugar Mills Ltd. Karnal. The term of the reference was:—

Whether the termination of services of Shri Kartar Singh was justified and in order ?
If not, to what relief is he entitled ?

On the receipt of the order of reference, notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, on the basis of which the following issues were framed:—

- (1) Whether the applicant is a workman under section 2 (s) of the I.D. Act?
- (2) Whether the reference is bad in law and unallowable in this court as per the reasons given in paras 2 & 3 of the I.D. Act, 1947?
- (3) As per reference?

Issues Nos. 1 & 2 were treated as preliminary. The management examined Shri Gobind Lal, General Assistant respondent as their only witness and closed their case. I heard the learned representatives of the parties and decide the issues as under:

Issue No. 1.—The workman depposed that he was appointed as Assistant Security Officer on 1st July, 1976. His scale of pay was Rs. 185 and at the time of his retirement his scale of pay was Rs. 270. He was working under Chief Security Officer Shri Shaikh Singh. He was not authorised to terminate the services of any employee nor he could appoint any. He could neither sanction leave nor he could promote any person. In this cross-examination the workman has given out that Shri Kartar Singh was dismissed from service in the year 1977 and there was no Chief Security Officer appointed after his termination. Above 40 to 45 security guards were working under him. He used to assign duties to those guards. He used to draw the duties of the security guards in different shifts. He admitted his signatures on Ex. M-1 to M-5 in point (A) and the writing thereon was in his hand. Likewise he admitted his signatures on Ex. M-6 to Ex. M-19. He stated as incorrect that he was getting Rs. 700 as his monthly salary but he could not tell as to what was his pay. He further stated that duties were allotted on behalf of the Managing Director though the duties were allotted by him. He admitted that duties assigned on Ex. M-9 to M-19 were done by him and voluntarily. The duties were assigned on the instructions of the Managing Director but there were no signatures of the Managing Director, nor there was any writing by the Managing Director on Exhibits M-9 to M-19 and then voluntarily stated, there were verbal orders of the Managing Director. He further gave out that he used to supervise the work of 40 to 45 guards.

The management witness Shri Gobind Lal also proved that Shri Kartar Singh was promoted as Security Officer and as Security Officer he used to allot duty, to the watch and ward staff and to supervise their work and he was drawing more than Rs. 500 as his monthly salary. The management witness admitted in his cross-examination that the workman was not competent to punish or appoint any employee working under him and one Shri Rajinder Singh Jeswal was deputed to look after the security department during office hours but this arrangement was for a few days.

The workman representative laid stress and deploint that there was evidence on the record that no power of appointment and of taking disciplinary action against the subordinates vested with the workman and the management had tried to prove that since the workman used to assign duties and distribute the work to the guards so he was performing the duties of supervisory, control and of managerial nature but in the opinion of the workman representative that was wrong. He has fully contended that it was held by various courts that the person who had been authorised to assign duties and distribute work were covered under the definition of workman. He cited the authority AIR 1966 Supreme Court page 31 and the relevant authority was not supplied by the representative of the workman for my perusal and I am ce to that in the case cited above the employee must have been doing the duties mainly of the nature of skilled, unskilled, clerical or technical in addition to the duties of assigning and distributing work to other employees. The workman has not been able to establish that he was doing any other kind of duties except the duty of assigning and checking the work of the security guards working under him.

There is a well settled rule of law that positive approaches to the nature of duties performed alone would determine whether an employee is a workman under section 2 (s) of the I.D. Act. It has to be seen in which of the categories he was employed (a) was he performing clerical duties (b) was he performing technical duties (c) was he performing manual duties? But the applicant was not doing any such duty though there is evidence that the applicant was performing the supervisory duties and was getting more than Rs. 500 as his monthly salary.

From the material on the record it is fully proved that Shri Kartar Singh had not been doing any kind of work which could bring him into the ambit of section 2 (s) of the I.D. Act but he is covered in the exception contained in clause IV of section 2 (s) as he was mainly employed in a supervisory capacity and was drawing wages exceeding Rs. 500 per month.

It is therefore held that Shri Kartar Singh is not covered under the definition of workman as given in section 2 (s) of the I.D. Act. The issue is accordingly decided against the workman.

As a result of my findings on issue No. 1, I hold that Shri Kartar Singh is not competent to raise the industrial dispute under section 2 (A) of the I.D. Act and the reference is bad in law. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated 26th July, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsment No. 1806, dated 30th July, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.